

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RHONDA M. SPANN
Claimant

VS.

FAIRLAWN HEIGHTS NURSING HOME
Respondent

AND

**KANSAS HEALTHCARE ASSOCIATION
WC INSURANCE TRUST**
Insurance Trust

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Docket No. 1,011,163

ORDER

Claimant appealed the March 23, 2004 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for a June 16, 2002 exposure to chemical fumes. As a result of that exposure, claimant alleges she now has breathing difficulties, nasal infections, headaches, and related symptoms.

In the March 23, 2004 Order, Judge Benedict referred to the medical opinion of Dr. Allen J. Parmet and denied claimant's request for benefits.

Claimant contends Judge Benedict erred. Claimant argues the Judge erred by considering Dr. Parmet's report as the doctor believed respondent had hired him to evaluate claimant as respondent's medical expert witness when, in truth, the Judge had appointed the doctor to perform an independent evaluation. Accordingly, claimant requests the Board to overturn the March 23, 2004 Order and remand this claim to the Judge with directions to appoint a true neutral physician. Claimant concludes his brief to the Board, as follows:

In the case at hand, Dr. Parmet was, in effect, working for Respondent when he prepared his report. This is not a neutral report, and it should not have been given the special weight it was by Judge Benedict. The Order denying

compensation and medical treatment makes it clear that Judge Benedict not only considered the report, but relied upon it and adopted it in making his findings. Claimant requests the March 23, 2004 Order of Judge Benedict be overruled, and that the case be remanded for determination of compensation and medical treatment with the re-appointment of a truly neutral physician.¹

The issue presented on appeal is whether the Board should remand this claim to the Judge because Dr. Parmet allegedly believed he was hired as respondent's medical expert to evaluate claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering claimant's arguments, the Board concludes this appeal should be dismissed as the issue raised by claimant is not subject to review from a preliminary hearing order.

This is an appeal from a preliminary hearing order. Consequently, the Board's jurisdiction to review alleged errors arising from a preliminary hearing is limited. Generally, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.² Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the accident or injury under the Workers Compensation Act.³

The issue of whether a judge erred by considering a medical report from a doctor who was appointed to conduct an independent medical evaluation but who mistakenly

¹ Claimant's Brief at 4-5 (filed Apr. 19, 2004).

² K.S.A. 2003 Supp. 44-551(b)(2)(A).

³ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

believed he was hired by respondent to be its medical expert is not a jurisdictional issue listed in K.S.A. 44-534a. Moreover, the Judge did not exceed his authority by considering the medical report from Dr. Parmet and giving it whatever weight it warranted in light of indications in the report that the evaluation was performed on behalf of respondent.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Board dismisses claimant's appeal.

IT IS SO ORDERED.

Dated this ____ day of May 2004.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Trust
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a.